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SEP 28 2005

Docket No.: 1268-094

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

: **EXPEDITED PROCEDURE**  
: **RESPONSE UNDER 37 CFR 1.116**

Yoram LEVANON *et al.*

:

U.S. Patent Application No. 09/534,170

: Group Art Unit: 3622

Filed: March 24, 2000

: Confirmation No. 2252

: Examiner: Yehdega Retta

For: METHOD FOR PRODUCING OPTIMUM-EFFECT MARKETING

**PETITION UNDER 37 CFR 1.181(a)(3)**

Mail Stop Petition  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

Applicants hereby petition the Director to review the finality of the Office Action mailed June 28, 2005. This petition is reviewable under 37 CFR 1.181(a)(3). MPEP, sections 1002.02(c) and 706.07(c).

Applicants further submit that the finality of the outstanding Office Action is premature, because the Examiner has failed to follow proper USPTO practice and procedure.

"[E]vidence traversing rejections, when timely presented, must be considered by the examiner whenever present. All entered affidavits, declarations, and other evidence traversing rejections are acknowledged and commented upon by the examiner in the next succeeding action." MPEP, section 716.01 (emphasis added).

In this case, Applicants timely filed the Rule 132 Declaration (April 4, 2005) well before the date (June 28, 2005) of the Final Office Action. Therefore, the Declaration must be considered and

Application No.: 09/534,170Docket No.: 1268-094

commented upon by the Examiner. Since the Examiner has failed to give any consideration to the Rule 132 Declaration, the outstanding Office Action and its finality are absolutely improper and should be withdrawn/vacated.

No petition fee is deemed required. However, please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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**Date: September 28, 2005**

**CERTIFICATION OF FACSIMILE TRANSMISSION**  
I HEREBY CERTIFY THAT THIS PAPER IS BEING FACSIMILE TRANSMITTED  
TO THE PATENT AND TRADEMARK OFFICE ON THE DATE SHOWN BELOW

*Kindra Bryant*  
TYPE OR PRINT NAME OF PERSON SIGNING CERTIFICATION

SIGNATURE \_\_\_\_\_ September 28, 2005 \_\_\_\_\_  
DATE

*571-273-8300*  
FACSIMILE NUMBER